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2 STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS
3 IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 3-82:
4 AMERICAN FEDERATION OF STATE, COUNTY)
AND MUNICIPAL EMPLOYEES, AFL-CIO,)
5 Complainant,)
6 - vs -) ORDER
7 GALLATIN COUNTY and all REPRESENTATIVES)
8 THEREOF, BOZEMAN, MONTANA,)
9 Defendant.)

10 * * * * *

11 On January 21, 1982, AFSCME filed a complaint against
12 Gallatin County and all representatives thereof alleging a
13 refusal to bargain by the County. AFSCME represents certain
14 employees in the Gallatin County Sheriff's Office. On February 3,
15 1982, Gallatin County filed a Motion to Dismiss the complaint
16 alleging that the Board of Personnel Appeals had no jurisdiction
17 over Gallatin County.

18 The County reasoned, in a Brief in Support of Motion to
19 Dismiss, as follows:

20 In the related case of UD 18-81, AFSCME, AFL-CIO and John
21 Onstad, Sheriff of Gallatin County, a petition for unit deter-
22 mination filed by AFSCME with the Board of Personnel Appeals
23 was served on Sheriff Onstad. The County argues that the proper
24 parties which should have been served in that case are the
25 commissioners of Gallatin County. The County argues that since
26 the commissioners were not properly served in that related
27 proceeding, that therefore the Board of Personnel Appeals does
28 not now have jurisdiction to entertain an unfair labor practice
29 against the County.

30 The County is correct. In a North Dakota Supreme Court
31 decision construing a section of North Dakota law very similar
32 to Rule 4 D (2) (g), M.R. Civ. P., the North Dakota Supreme

1 Court held that service upon the county auditor who serves as
2 the clerk of the governing board was not sufficient service.
3 See Farrington v. Swenson (N.Dak.), 210 N. W. 2d 82 (1973).

4 It therefore appears that service upon the sheriff was not
5 sufficient to constitute service upon the county commissioners.

6 It is therefore ordered as follows:

7 1. The County's Motion to Dismiss the unfair labor
8 practice charges is hereby granted.

9 2. The election held in UD 18-81 is hereby vacated and
10 the certification of AFSCME as the exclusive representative of
11 certain members of the Gallatin County Sheriff's Office is
12 hereby revoked.

13 This order does not preclude the filing of another
14 petition for unit determination and another election.

15 DATED this 19 day of April, 1982.

16 BOARD OF PERSONNEL APPEALS

17
18 By Robert R. Jensen
19 Robert R. Jensen
Administrator

20 * * * * *

21 CERTIFICATE OF MAILING

22 The undersigned does certify that a true and correct copy
23 of this document was mailed to the following on the 20 day
of April, 1982:

24 Robert R. Throssell
25 Deputy County Attorney
26 Law & Justice Center
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Bozeman, MT 59715

27 Nadiean Jensen
28 Executive Director
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32